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7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
13 Against:

14 **KEVIN RYAN WARDLAW-BARNUM**

15 Registered Nurse License Applicant

16 Respondent.

Case No. *2013-445*

**STATEMENT OF ISSUES**

17 Complainant alleges:

**PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs.

21 2. On or about June 27, 2011, the Board of Registered Nursing, Department of  
22 Consumer Affairs received an Application for Licensure by Examination from Kevin Ryan  
23 Wardlaw-Barnum ("Respondent"). On or about June 22, 2011, Kevin Ryan Wardlaw-Barnum  
24 certified under penalty of perjury to the truthfulness of all statements, answers, and  
25 representations in the application. The Board denied the application on October 12, 2012.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Statement of Issues is brought before the Board of Registered Nursing  
28 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All

1 section references are to the Business and Professions Code ("Code") unless otherwise indicated.

2 3. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license  
3 when it finds that the applicant has committed any acts constituting grounds for denial of  
4 licensure under section 480 of that code.

5 4. Section 480 of the Code states:

6 "(a) A board may deny a license regulated by this code on the grounds  
7 that the applicant has one of the following:

8 (1) Been convicted of a crime. A conviction within the meaning of this  
9 section means a plea or verdict of guilty or a conviction following a plea of nolo  
10 contendere. Any action that a board is permitted to take following the establishment  
11 of a conviction may be taken when the time for appeal has elapsed, or the judgment  
12 of conviction has been affirmed on appeal, or when an order granting probation is  
13 made suspending the imposition of sentence, irrespective of a subsequent order under  
14 the provisions of Section 1203.4 of the Penal Code.

15 ...

16 (3) (A) Done any act that if done by a licentiate of the business or  
17 profession in question, would be grounds for suspension or revocation of license.

18 (B) The board may deny a license pursuant to this subdivision only if the  
19 crime or act is substantially related to the qualifications, functions, or duties of the  
20 business or profession for which application is made."

21 5. Section 490 of the Code states, in pertinent part:

22 (a) In addition to any other action that a board is permitted to take against  
23 a licensee, a board may suspend or revoke a license on the ground that the licensee  
24 has been convicted of a crime, if the crime is substantially related to the  
25 qualifications, functions, or duties of the business or profession for which the license  
26 was issued.

27 (b) Notwithstanding any other provision of law, a board may exercise any  
28 authority to discipline a licensee for conviction of a crime that is independent of the  
authority granted under subdivision (a) only if the crime is substantially related to the  
qualifications, functions, or duties of the business or profession for which the  
licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or  
verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
a board is permitted to take following the establishment of a conviction may be taken  
when the time for appeal has elapsed, or the judgment of conviction has been  
affirmed on appeal, or when an order granting probation is made suspending the  
imposition of sentence, irrespective of a subsequent order under the provisions of  
Section 1203.4 of the Penal Code."

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed

nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2762 of the Code states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement."

#### **REGULATORY PROVISIONS**

8. California Code of Regulations, title 16, section 1444, states, in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following..."

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1 Code section 23152(b) in Case No. SWM1200666. The court placed Respondent on probation  
2 for 48 months, with terms and conditions and ordered Respondent to be committed to the custody  
3 of the Riverside Sheriff's Office.<sup>1</sup> The circumstances underlying the conviction are that on or  
4 about January 22, 2012, California Highway Patrol Officers conducted a routine traffic  
5 enforcement stop on a vehicle driven by Respondent. Upon contacting Respondent, Officers  
6 noticed an odor of alcoholic beverage emitting from within Respondent's vehicle. The  
7 Respondent failed to perform FST's as explained and demonstrated. The Respondent admitted to  
8 consuming one beer prior to driving.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Conduct Warranting Discipline of Licensee)**

11 12. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
12 the Code in that Respondent was convicted of crimes substantially related to the qualifications,  
13 functions and duties of a registered nurse in violation of section 490 and section 2761,  
14 subdivision (f) of the Code in conjunction with California Code of Regulations, title 16, section  
15 1444. The convictions are described in more particularity in paragraphs 10 and 11 above,  
16 inclusive and hereby incorporated by reference.

17 13. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
18 the Code in that Respondent committed unprofessional conduct when he drove while under the  
19 influence of alcohol and/or drugs in violation of section 2761, subdivision (a) of the Code. The  
20 conduct is described in more particularity in paragraphs 10 and 11 above, inclusive and hereby  
21 incorporated by reference.

22 14. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
23 the Code in that Respondent committed unprofessional conduct when he drove while under the  
24 influence of alcohol and/or drugs in violation of section 2761, subdivision (a) of the Code. The  
25 conduct is described in more particularity in paragraphs 10 and 11 above, inclusive and hereby  
26 incorporated by reference.

27 \_\_\_\_\_  
28 <sup>1</sup> Sentence to run concurrent with sentence in Case No. SWM1200666.

1        15. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
2 the Code in that Respondent committed unprofessional conduct when he used a controlled  
3 substance, dangerous drug or alcoholic beverage to an extent or in a manner dangerous or  
4 injurious to himself, others and the public in violation of section 2761, subdivision (a) of the  
5 Code as defined in section 2762, subdivision (b) of the Code. The conduct is described in more  
6 particularity in paragraphs 10 and 11 above, inclusive and hereby incorporated by reference.

7        16. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
8 the Code in that Respondent committed unprofessional conduct when he was convicted of a  
9 criminal offense involving the prescription, consumption or self-administration of alcoholic  
10 beverages in violation of section 2761, subdivision (a) of the Code as defined in section 2762,  
11 subdivision (c) of the Code. The criminal offense is described in more particularity in paragraphs  
12 10 and 11 above, inclusive and hereby incorporated by reference.

13        17. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
14 the Code in that Respondent committed unprofessional conduct when he was committed or  
15 confined by a court of competent jurisdiction for the intemperate use of alcoholic beverages in  
16 violation of section 2761, subdivision (a) of the Code as defined in section 2762, subdivision (d)  
17 of the Code. The criminal offense is described in more particularity in paragraphs 10 and 11  
18 above, inclusive and hereby incorporated by reference.

19        18. Respondent's application is subject to denial under section 480, subdivision (a)(3) of  
20 the Code in that Respondent violated provisions of the Nursing Practice Act in violation of  
21 section 2761, subdivision (d) of the Code. The violations are described in more particularity in  
22 paragraphs 12 through 17 above, inclusive and hereby incorporated by reference.

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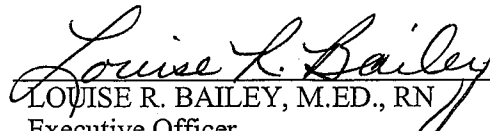
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Kevin Ryan Wardlaw-Barnum for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: December 3, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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